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DEMOCRATIC SOCIALISM AND ITS IMPACT ON THE INDIAN CONSTITUTION*

By

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Great political leaders, like Mahatma Gandhi and the Hon'ble Pandit Jawaharlal Nehru and revolutionary reformists like Lenin and Stalin have remarked that imperialism is the chief capitalistic enemy of true economic democracy and the last war demonstrated the utter failure of capitalistic nationalism to solve international problems unless it is imbued with a true desire on the part of every nation to temper its principles of political democracy with altruistic and socialistic ideals of economic democracy. "The failure of Parliamentary Democracy is not that it has gone too far but that it did not go far enough. It was not democratic enough because it did not provide for economic democracy and its methods were slow and cumbrous and unsuited to a period of rapid change. (Jawaharlal's Autobiography, page 530-52)". A nation having a centralised administration with power concentrated in the hands of the few oligarchs controlling all the means of production in the state, must naturally drive the unemployed have-nots in quest of foreign land, to satiate their hunger, and itself be the instrument of suppressing democracy and the fondly cherished civil liberties of the subjects in the land of their conquest. *Vide* Lenin on "Imperialism the Highest Stage of Capitalism". The subjects of the conquered state must necessarily be content to be mere wage earners without any initiative or individuality in commerce or industry. This imperialistic hunger is a never-ending hunger and while annihilating all that is good and great in civilised man by the creation of the inferiority complex in the governed, it becomes at the same time the repository of suspicion and fear, and in the name of defending its possessions from conquest, proceeds to arm itself, and endangers thereby the liberty of every other nation including its individuals. Thus, problems of individual liberty both in the political as well as economic sphere, have a distinct and far-reaching effect on not only the welfare of the state but also on the peace and well being of the world. Economic democracy is therefore not merely a national question, a question of domestic politics but one of world or international importance. *Vide* Findings of Asian Relations Conference in Delhi in April, 1947.

The history of the development of economic democracy is connected with the development and application of the principles of philosophy enunciated by Plato, Rousseau, Mazzini and Hegel to political thought in the west. The origin of Fascism and Nazism, according to Wyckam Steed in his book on 'Way to Social Peace,' page 49, is to be found in the political philosophy of Hegel. From it Karl Marx and Frederik Engels, drew and expounded ideas in their joint work 'Capital' and in their Communist Manifesto of 1848. The Marx Manifesto clearly attributes all the evils of society to a never-ending conflict of class warfare which can end

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only by the destruction of middle class who are in control of all power of wealth in the form of industry or land, and the solution of the problem lies in the distribution of the means of production to all. Therein alone lies the way to the ending of the hostility of one nation to another.

The Marx doctrine was assimilated by different nations who adumbrated different idealogies, but having this distinct common platform, that the individual must bow down to the higher mandate of either the state or the society or the nation. The mandate of the state was clearly expressed in the collectivist theory of the state which assumed the form of Fascism of Mussolini. The mandate of society assumed the form of Socialism or the Russian Communist ideology enunciated by Lenin and Stalin. The mandate of the nation assumed the form of the National Socialism of Hitler; in all the three ideologies, individual interest was to be subordinated to a wider conception in varying degrees, but it must be remembered that both Fascism as well as National Socialism wrested power from democracy and became its powerful enemy by centralising power in dictatorship, thus annihilating individuality itself and not merely individual liberty. In Fascism and Nazism, individual liberty was largely curtailed, whereas in Socialism of Russia, individual liberty was enlarged to make it co-equal with the interests of society, with the result that there was to be no individual apart from his being an instrument of social progress. Fascism and Hitlerism had to arm themselves and be the protagonists of warfare, and they attempted to spread their philosophy by the achievement of their imperialistic ambitions.

The principles of economic democracy in Europe, sprang up as a result of the French revolution and the wars between France and England. The famous declaration of the Rights of Man in the French Constitution of 1789 was followed by other constitutions, the Italian and the German. The beginnings of the 20th century witnessed the rise of the principles of Liberalism, Social democracy, Syndicalism, etc.

In Italy, Social democracy arose as a remedy for the economic ills consequent on the war between England and Germany in 1914. It was Mussolini, leader of the Fascist party who usurped the powers of Government as a Dictator soon after the Russian Third International which started the movement. Catholic Pope who was opposed to the preaching of Socialism spread a new Gospel of Christian democracy to counteract it. A new party called the Party Populae was started to destroy the "Burgeois". Donsturgo, a priest preached radical doctrines against the Burgeois, and recommended distribution of land. The National party was a third party which preached Mazzini's doctrines. Socialists were for distributing lands but the Nationalists were not so keen. Finally the Fascist party of Mussolini and the National party were amalgamated in 1923 and the Fascist State came to power. The ideal of the Corporative State was thus evolved. The proudest boast of Fascism, according to Henry Russal Spencer in his book on "Government and Politics of Italy", "is in solving the world wide puzzle, of how capital and labour may be led out of the sterile, destructive struggle for mastery at the nation's expense, and converted to methods of social integration and to orderly working side by side in the nation's economic effort. Co-operative production, not competitive distribution becomes the major economic interest. The state without itself engaging in socialist production or distribution, is to secure social justice by authoritatively apportioning productive tasks and securing the appropriate distributive rewards that automatically result".

The Italian Constitution speaks of certain fundamental rights. It calls these rights as Rights and Duties of Citizens. Under Article 24, all are equal before the Law, all should contribute towards the state and in proportion to their possessions. Individual liberty is guaranteed, the dwelling house is inviolable and domicile is protected. Under Article 29, all property without exception is inviolable. Nevertheless when the public interest legally ascertained requires it, a person may be bound to give it up, in whole or in part, upon payment of a just indemnity in accordance with law."

But with all this, it must be said that liberty as preached by Mussolini was in practice the liberty of the state and not of the individual. Mussolini himself defined liberty as the only freedom that can seriously be considered—the freedom of the state and of the individual within the state", which means that Fascism is for the state—and for the individual so far as he coincides with the state. Fascism does not restrict individual freedom but what it not only restricts but exterminates is his individuality. Mr. A. B. Ashton in his book on the 'Fascist, His State and Mind,' pages 110 to 116, says that the liberty of action for the Fascist individual regardless of the stand of the community is a logical impossibility from the collectivist point of view. Hence the judiciary became merely a branch of the administration authorised to enforce and effectuate among the members of the community the collective will as proclaimed by the community. The courts turned into mere agencies of administration from being an independent arm of state power. "In the democratic country the individual is subject to the law which however is not allowed to infringe upon his specially protected rights. In other words the law signifies the worst that democratic community can do to their single members. In the Fascist State the relation is reversed. The individual is bound and restricted anyway, by virtue of the fact that he is a member of a collective body, to the behaviour pattern required by the communal interests and its many synonyms like 'Fascist Spirits', 'some popular feelings'. As a German Jurist remarked, in Italy, the will of the state was the soul of the law. In English parlance this aspect of the matter will be viewed as negativing the citizen's right to 'equality before the law', which is cherished by all liberty loving people. Fascism does not believe in a justice independent from the group or society adminstering it. They admit it cannot be an absolute justice. But they cleverly contend that all justice proceeds on communal interests. Another objection which is raised by all liberty loving people to the Facist theory, is, that it destroys the very certainty which according to well-known principles of jurisprudence constitutes good law. The Fascist answers this charge in this way, that the individual being a member of the community must be presumed to know, to feel, and participate in the collective will. This is Fascist organic conception of the state, *viz.*, that the will of the state is the soul of the law, which conception has supplied so much protection to the lawless despotism of the Fascist. Fascism authoritative in principle and totalitarian in conception, thus refused to be controlled by individual norms. There was absolutely no department of governmental activity free from the influence of this doctrine. Universal conscription became the rule not only in military matters but also in the employment of labour. The Fascist Press became the mouthpiece of the communal will and purpose. "In dealing with the intellectuals, in conquering or crushing them one by one, the Fascist regime exhibited the most accomplished refinement of cruelty" *vide* page 126, Fascism—who benefits" by Max Ascoli and Arthur Fcilar of the University in Exile"!

The economic organisation in Italy is outlined in the corporate theory, the Cartedel Laboro of 21st April, 1927, which was proclaimed by the Grand Council of Facism in 1927. They are general principles generally followed in the Republic to frame laws. In 1934 Parliament was abolished and a National Council of Corporation was established. Article I of the Carte del Laboro says that the ancient and powerful Italian nation stands above the single or combination of individuals as an independent organism of superior value and represent the Fascist State and that labour of all forms is a social duty, and only as such, protected by the State. The process of production is for the nation, an indivisible whole. Its purposes, without distinction, are one and the same individual well-being, and furtherance of the state power.

Article III.—Professional and labour organisation is free, but only the legally recognised and communally controlled organisation has the right to speak for the entire category of employers and employees for what it is established, to represent their interests before the state and against other organisations, to make collective agreements binding upon all members of the category, to collect dues from them and to exercise all public functions conferred upon it.

Article IV.—The collective agreement serves to express the solidarity of different factors of production, by compromising the conflicting interests of employers and employees and subordinating them to the higher interests of production.

Article V.—The labour court is the organ employed by the state to decide labour conflicts.

Article VI.—The legally recognised corporations assure the legal equality between employers and employees, maintain discipline in production and labour, and aid in its improvement—" since interests of production are national interests, the corporations are legally recognised as organs of state."

Article VII.—The corporate state considers private initiative and production the most valuable and the most effective instruments for the protection of national interests. " Private organisation of production is a national function of the employer. He is therefore responsible for it to the state. Employees are active collo-borators in the economic enterprise the management of which is the employers' function and responsibility.

Article VIII.—It is the duty of employer associations to direct all their efforts towards the increased and improved production and towards decrease in prices.

Article IX.—State interference in economic affairs takes place only where private initiative is lacking or insufficient or where political interest of the state are affected. Such interference can take the form of supervision, aid or direct assumption of control ".

In agriculture, Fascist farm policy was interested in getting practical results. Mussolini's farm programme was of two kinds : 1. Bonifica integrale or large scale reclamation undertaking. 2. The battle of the grain, which was a drive to raise the wheat output. Organisation of agriculture was intended to achieve these ends. The farming population becomes a favoured and protected population and farming takes the character of one of communal interests as different from a purely private business. " Fascism defended and encouraged private property in the form of small ownership as it recognised the economic liberty secured by the institution of private property and as it also breeds the maximum of initiative and as possession of private property is also an opportunity for the individual to acquire responsibility to society. The right to acquire property and transmit it are the corner stones of fascist policy. In Italy, the number of small farmers or part owners form a very large proportion of the population, also small shop keepers, small independent business of all kinds, including artisans " (Fascism by Major J. B. Barnes, pages 162-4). This results in the complete abandonment of concepts governing capitalist agriculture. Capitalism assumed secondary importance. The German ideal was also similar in purpose, though in methods different, as we shall see hereunder, under the German constitution of 1919.

THE CONSTITUTION OF THE GERMAN FEDERATION OF 1919.

The German Constitution was based on Liberty and Justice intended to serve the cause of peace, domestic and international and to promote social progress. Article VII (12) and Article VII (13) deal with the socialisation of national resources and of economic undertakings and the production by manufacture, distribution and regulation of prices, of economic commodities under social management. Under Article 48 if the state fails to perform the duties imposed upon it by the Federal constitution or the Federal law, the President of the Federation, may enforce performance with the aid of armed forces. If public order and security are seriously disturbed or endangered within the Federation the President of the Federation may take all necessary steps for their restriction, intervening if need be with the aid of armed forces. For the said purpose he may suspend for the time being, either wholly or in part, the Fundamental rights described in Article 114 Personal Freedom, 115 Residence, 117 Secrecy of Correspondence, 118 Freedom of Expression, 123 Right to Assemble, 124 Peaceful Associations, 153 Property which is guaranteed by the Constitution. The contents and limits of right of property.

are defined by laws. Expropriation is admissible only in public interest and so far as authorised by law and is accompanied by *adequate* compensation unless a Federal Law otherwise determines—the constitution further says that property entails responsibilities, it should be put to such use as to promote at the same time the common good. Section V deals with economic life. Organisation of economic life is in accordance with the principle of justice and aims at security for all conditions of existence worthy of human beings. Within these limits, the individual is to be secured the enjoyment of economic freedom. Legal compulsion is admissible only so far as is necessary for the realisation of threatened rights, or to serve overriding claims of the commonweal. Freedom of trade and industry is guaranteed within the limits prescribed by Federal laws. Article 154 deals with the right of inheritance which is guaranteed, but the state fixes laws for taking its share in the estate of the deceased person. Article 155 relates to the distribution and use of land which are to be under state supervision, with a view to the prevention of abuses and in order to secure for every German a healthy dwelling and for all German families especially large ones, according to their needs, suitable homesteads and small holdings. In the law to be enacted concerning homesteads the claims of those who have taken part in the late war will receive special consideration. Land may be expropriated, if required for houses, for settlements for bringing it under cultivation or for encouragement of agriculture. Entails are to be broken off. The cultivation and utilisation of the soil is a duty which a landlord owes to the community. The unearned increment in the value of land is to be used for the benefit of the community. Article 156 regulates socialisation. The Federation may by law without prejudice to the claims to compensation and with a due observance of the rules governing expropriation—convert into social properties such private economic undertakings as are suitable for socialisation.. It may assign to itself or to the states, or to the local committees, a share in the management of economic undertakings or of their combination or otherwise secure for itself a decisive influence therein. Further more in case of urgent needs, the Federation may provide for the compulsory formation of self-governing syndicates out of economic undertakings and their combination, with a view to their management on social lines—the motive being to secure the co-operation of all productive sections of the community, to secure the participation of both employers and employees in the management, and to regulate on principles of social economy the production, manufacture, distribution, uses and prices, as well as import and export of economic commodities. Upon their demand, co-operative, industrial, and trading societies and their unions are to be incorporated into the socialised economic system, due regard being had to their Constitution and their secular character.

Labour, intellectual work, fine arts, etc., are all protected. Freedom to combine for protection of labour, etc. and the leave and pay of labourers are guaranteed. Health insurance, maternity insurance, insurance against old age and infirmities are all guaranteed. Women are guaranteed general minimum of social rights. Every German is given a chance to earn a living by economic labour.

Article 164:—The interests of the independent middle class engaged in agriculture, industry and trade are to be furthered both in legislation and administration. It must be protected against excessive burdens and against the risk of absorption.

Article 165.—Co-operation between workers and employers are recognised, and agreement enforced in regard to wages and conditions of labour. Bills of fundamental importance in relation to matters of social and economic policy, before being introduced in Reich Stag shall be submitted to the Federal Government, to the Federal Economic Council, for an expression of its opinion.

Article 107.—There must be administrative courts, in virtue of laws both in the Federation and the State, for the protection of the individuals against orders and decrees of the administrative authorities.

The fundamental rights of the individual are enunciated from Article 109 onwards:—All are equal before the law—men and women have the same political

rights and duties, privileges and disadvantages of both arising from birth and rank within the sphere of public law are abolished. *Article* 114—Freedom to move from one place to another, to acquire land and to follow any calling. *Organisation of Federal Economic Council* and the system of council under them are reviewed by Oppenheim in his book on the 'German Federation'. He says one more organ of Government claims attention, the Federal Economic Council to which as will presently appear, a subsidiary share in legislation is assigned by the constitution. This is a body of an entirely novel character, without parallel in the public law of any foreign state. "It is hardly necessary to repeat here that anything in the nature of a class regime, any institution suggestive of a proletarian dictatorship, either in the central government or in that of the states, is absolutely inconsistent with both the letter and spirit of the constitution. As a reporter of the committee of the constitution explained " the basic aim in setting up the council, is to establish by the side of the political organisation of the state, an independent economic organisation which is to be entrusted with the task of solving economic problems with the aid of the economic forces themselves." The root idea appears to be a logical deduction from the philosophy of Hegel developed in the economic field by his disciple Lawrence Vonstein, that industry is always monopolised by capital every time it is used by any organ of government. A similar range of thoughts inspires Saint Simon and culminated in the Marxian Doctrine of Class Conflict—which in Russia "was solved by the organisation of the struggle of the proletariat which is the essence of the system of councils as set up in the Russian Soviet Republic." Mr. Oppenheim pleads for a *via media* between these extremes and he finds the solution only on proceeding on democratic lines. "That is, without in any way denying the reality of conflicting interests, the school of thought at once attempts to provide organisation, through which they can be harmonised and legalised". It is essential that in a matter of such social importance, both parties should leave off their attempt to run on parallel grooves and reconcile their conflict, leave out their idea of the one dominating the other, and to meet on a footing of perfect equality. The attempt was to decentralise democracy into two units, political and economical "Moreover the democratic principle favouring detachment, gave a powerful impulse to the tendency towards self-government in the economic as in every other sphere. Democracy in the German Constitution is not only the ruling political principle, its spirit also permeates the whole of the social and in particular the economic fabric. The age of autocratic Government and of the absolute supremacy of capital in industry belongs to the past". These were the foundations of the German constitution and as we will see later on, the Indian constitution also puts both political democracy and economic democracy on a footing of perfect equality, as laid down clearly in their declaration of rights contained in the preamble.

The fundamental rights mentioned in the German Constitution are limits imposed on the omnipotence of the state by assigning to the indivudual the sphere within which it was free to move in complete independence, immune from all official interference. The Declaration of 1789 mentioned it as an inalienable heritage belonging to man under the dispensation of the Law of Nature (Droits de l'home) or as Droits due citoyen or as originating in a constitutional grant, *i.e.*, in positive law, as for the first time in their charts constitutionallè of Louis the XVIII of 1814, where they are treated under the significant heading " Droit public des Fancais". It was from the latter source that American constitution introduced the Fundamental Rights in their constitution, either directly, or through the medium of the Chapter 'Des Droits des Belges' in the Constitution of 1830.

The Weimer Constitution, specifically mentions fundamental rights, though the Imperial constitution of 1871 and the Republican constitution of 1875 do not contain fundamental rights. Both the Prussian and the Government drafts leading up to the Weimer constitution, contain short sections enumerating fundamental rights, which was finally adopted by the National Assembly after much difference of opinion and discussion. It was called by Dr. Nauman as the German people's political bible, as a primer of German Public Law. Both the German constitution of 1849 and the Prussian constitution of 1848 and 1850 mention fundamental rights. They

speak of them not merely as bricks in the building but also as the bread of the life of the constitution.

This system of German Government, underwent great changes by the growth of the National Socialist Party headed by Hitler in 1923. Hitler's 'Mein kampf' defines, and defends the necessity for a strong middle class in its programme of the National Socialist Party. Germany enters the Third Reich. Before the Nazis came to power, the collective economic organisation was mainly intended to protect individual rights and interest. Trusts abounded in industries, and the German Trade Associations enjoyed great powers. The public were accustomed to the use of the co-operative societies, labour relations were dependent on collective bargains, labour unions were amalgamated in the social democratic Free unions. Nearly 90 per cent. of trade and commerce were regulated by collective agreement between industrial unions and representative bodies of employer, and not between individuals and unions. The Nazis before they came to power, established "plant cells" in almost every organisation of governmental activity. These cells were units under which, certain trusted individuals in each organisation, were entrusted with effective power to control and regulate organisations. After the Nazis took charge of the Government, these cells were organised into the "Nationalist Socialist Planned Self-organisation". Regional labour trustees were appointed to safeguard labour wages, in 1933. Labour structure was absorbed in German Labour Front, a new organisation. In January 1934, the law for the organisation for the Nazi labour, enumerated the principles of capital and labour relations, as one of social responsibility fastened on the employer as 'leader', to be supervised by Government labour trustees. In 1934, organisation of labour front was made to agitate for labour problems. The Reich Chamber of Economics, was constituted as the head of the commercial organisation under the Minister of Economics, with 13 main divisions and 2 separate divisions, supervised by the Chamber of Commerce, and in 1936 the Labour front incorporated the Reich Chamber of Economics as its Economic Department. Thus the whole of Government industries came under the direct control of the Reich.

The essence of the German scheme as embodied in Articles I and II of the Law for the Organisation of National Labour are:—1. In a business enterprise, the owner as leader, and the employees as followers, shall work together to further the purpose of the enterprise, and for the common good of the nation and of the state. 2. As between the leader of the enterprise and the followers, the leaders may call for decisions concerning the enterprise. "He is to take care of the welfare of the followers. The followers are to keep faith with him in a spirit of solidarity in a common enterprise".

In Germany, the method of approach in farm policy was similar to the labour front in business. An institution called the 'Reichsnahrstand' an agricultural Corporation, was formed, whose purpose was to cement a perpetual bond between the soil and the peasant. By introducing a Farm Inheritance Law, the Entailed Farms law of 1933 which was intended to preserve the Farms of German agriculture in blocks of small and medium sized holdings. The policies and purposes to be adopted in the matter, were left to experts in the organisation and in the Government agencies controlling them. The farming class is treated with great favour by Germany and given personal protection. In comparing this with Indian Agriculture, it might be remarked that the transition from the patriarchal family living on undivided common land, to a joint family which by partition lives upon land in its exclusive possession, as described by Mr. Maine in his book on Hindu Law, must be presumed to have been intended for the preservation of blocks of small and medium sized holdings in India. The religious conception of a joint family law of survivorship and inheritance must have been adopted as a practical and empirical mode, under legal cover, of conserving these small blocks without being frivolously distributed by fragmentation.

The Irish Free State also embodies fundamental rights in its constitution. The country is mainly dependent on agriculture and there are not many industrial

towns in Irish Free State. The official Year Book published by Northern Ireland is itself a sufficient proof that the economic life of Ulster is the same as the rest of Ireland. Agriculture is the main industry of the province. All land have been completely nationalised by the State. Mr. Justice Hanna in his book "The Statute Law of the Irish Free State" gives us valuable information regarding the mode of purchase of land adopted by the Government in nationalising the industry. All net income by way of rents from lands were calculated on the average basis of 75 per cent. of their rents and capitalised value was calculated at 15 years' purchase of the above basis with 10 per cent addition. Land bonds were issued to the landholders carrying interest at 4 per cent. The tenants repurchased these lands on an annuity basis. The Agricultural Credit Corporation of the State advanced money to Government as well as the tenants to redeem holdings and for making advances towards purchase by tenants of the proprietors' rights. In distributing lands, an average of 10 acres per individual is reckoned. These are valuable data for the planning Commission in determining ceiling on large holdings, and the mode of purchase of properties, which may be suitably adapted to Indian conditions of agriculture.

The Soviet Constitution, which is based on the principle 'He who does not work cannot eat' has completely nationalised all the means or sources of production. The Soviet Republic of 1918 in Article 22 says that "the Russian Socialist Federal Soviet Republic, recognising the equality of all citizens before the law, irrespective of race or nationality declares it contrary to the fundamental laws of the Republic to institute or tolerate privileges or any prerogative whatsoever, founded on such grounds, or to repress national morals or in any way limit their rights".

Article 23.—In the present interests of the workers classes, the Russian Socialist Federal Soviet Republic deprives individuals and sections of the community of any privileges which may be used by them to the detriment of the social revolution. The All Russian Congress of Soviets is the supreme authority of the Russian Socialist Federal Soviet Republic. The Constitution divides property into two categories: 1. Means of production; 2. Articles of consumption. All means of production belong to the state, *i.e.*, socialised *i.e.* land, waters, forests, mills, factories, railways, transport, trades, the banks, concerns, municipal corporation, etc. Articles of consumption are personal property under which category are included dwelling houses, furniture, utensils, clothing, etc., besides food. Means of production are socialised and left under the charge of co-operative societies, public organisations, etc. All citizens under Soviet Union have an equal right to a life of well-being. This does not mean that the standard of life of all is the same, that wealth is divided among them equally. Personal property consist equally of money and the articles of consumption, only rarely of means of production. Rural inhabitants, collective farmers, may have their subsidiary plots and cultivate them, and keep cattle and poultry and pigs and acquire implements. Their subsidiary holdings are not intended to serve the principal purpose of being means of livelihood but only to supplement the income derived from collective or social production. Personal properties are at the disposal of the owner and may be bought or sold or donated or pledged but they should not be used as a means of exploiting labour, or be the object of profiteering or usury. On the death of the owner, personal property passes to his heirs. The constitution makes specific provision for safety of personal property. Persons intending to build houses are given free gifts of plots and free building materials, furniture, etc. and cows can be purchased on easy terms. Loans are granted by the State on two per cent interest on instalment system.

Private enterprise is allowed to those persons who do not desire to take part in socialised or collective enterprise. It may be farming, handcraft or in one of the learned jobs or professions. Private enterprises must depend only on individual labour and not hired labour. In Lativia, Lithunia and Esthonia farming can be done with private labour or in private owned workshop, but not more than three labourers can be engaged.

Property is owned jointly, each one having a distinct share and inherited by each one's heirs. Bequests are held jointly if made to two or more persons. " The system of property relations established by the law and constitution of U.S.S.R. *is based* on the principle of harmonising the interests of Society with the interest of the individual citizen. Socialist Property promotes the augmentation of the national wealth and of the national income of the Soviet Union, and hence the improvement of the standard of living of its citizens. It makes it possible for the people to plan their national economy in their own interests. It was the socialist ownership of the Soviet people of the means of production that enabled them to defeat Nazi invaders and to uphold the liberty and independence of their country". Andrey Y. Vyshinsky says that in no democratic constitution of the capitalistic type have fundamental obligations been attached to fundamental rights, and that the Soviets pride themselves in having fundamental rights and obligations in their constitution under section 3. The Soviet principle of completely nationalising all means of production will not be suitable to Indian conditions of agriculture, its Property Law or the Personal Law of the Hindus as mentioned earlier in my Article on Land Reforms in India, published in the Madras Law Journal on 11th December, 1952 and Madras Law Weekly on 21st February, 1953. It might cause acute financial depression in India if land which is the credit structure of the whole fabric should cease to be a species of private property. Agricultural and commercial debts and credits will have to be disowned, and wiped off. Inheritance Law will have to be abolished. Religion will cease to have any spiritual motive force. Under these conditions, the Soviet Constitution will not serve the purpose of giving us a stable constitution suited to our traditions but a nearer approach towards the other continental and Irish Constitution may be made with a view to finding out a compromise between extreme political democracy and radical communism. Sir M. Visweswarayya's book on Planned Economy in India gives a very valuable guide. " The Indian plan must avoid Communistic tendencies ". " Despite its many efforts, even Russian Communism has not been able to eschew capitalism altogether. In Communism, there is still inequality of earned income " each one to earn according to his ability ". (2) There is private ownership of capital. (3) Inheritance is allowed. This was first abolished and then Exception Bill was passed allowing inheritance of personal property. (4) There is receipt of unearned incomes by individuals provided that the income of the rich is not too large a proportion of what is available for all.

The Japanese Constitution also speaks of freedom of person and liberty of the subject " within the limits of the law " and that measures may be necessary to be taken for the public benefit and should be provided by law.

The Constitution of the Polish Republic of 1921 in Chapter 5 talks of general duties and social rights and in Article 99 expressly reserves power for the state to determine what kind of property and within that limits, property can be in exclusive ownership of the state, on grounds of public utility and aso the limits to be imposed on citizens. Land must not be a subject of unlimited alienation being one of the principal factors of the life of the Nation. The Laws shall prescribe the degree in which the state has the right of compulsory purchases of real property, and of controlling the transfer of such property in conformity with the principle that the agrarian structure of Polish Republic ought to be based on agricultural holdings capable of normal productivity and of being privately owned. Dwelling house is inviolable and labour is given special protection. This illustrates that agricultural holdings in India also should be of a reasonable size capable of normal productivity and privately owned. Land must be an economic unit capable of maintaining a family with absorbing interest and no use will be served by reducing the size of the holdings making them uneconomical and inefficient for management.

The Constitution of the Kingdom of Serbs, Croats and Slovens in 1921 lays down provisions of fundamental rights and social and economic plans and gives the right for the states to intervene in economic relations between citizens in a spirit of justice and in order to avert social conflict. Agricultural insurance shall be

regulated by special regulation. Insurance against unemployment, disease, old age, etc., are provided. Private property is guaranteed but it should not be injurious to the interests of the community. The scope, extent, and limits of private ownership can be regulated by Law. Expropriation is wholly for legitimate public utility and with fair compensation. Article 43 lays down that a maximum extent of landed property, and the cases in which a minimum holding of land may not be alienated, shall be determined by law. An economic council under Article 44 is constituted to determine and decide on economic and social legislation. The significance of this constitution to Indian agriculture is the provision for insurance of various types which can be secured by Parliament in implementing the Five-year plan and besides regulating the minimum extent of land to be cultivated by any individual or family and the scope for the establishment of an Economic Council in India to regulate the social and economic relations in their application to problems coming under Parts III and IV of the Indian Constitution.

Now that we have made a study of some of the outstanding Continental constitutions working out the principle of economic democracy either as a measure of social reform or as a measure of an economic revolution, each in its own way, it is our purpose to emphasise this aspect of the supreme importance given to fundamental rights of the individual, uniformly in all the constitutions. It cannot also but be remarked that except in Russia, in every other constitution, special provision has been provided for the acquisition of individual property on fair and adequate compensation. (Weaver 'Constitutional Law', page 553.) But it must also be remarked that none of these constitutions give the individual his true place either in the state the society or the nation. Dominance of the state over individual initiative to the extent of expropriating it for one reason or the other is the guiding theme of the continental constitutional philosophy. The Indian Constitution breathes an entirely different atmosphere where individual character can mould itself according to the spiritual traditions inherited by every Indian and at the same time realising the fraternity of man as the common bond of allegiance to the nation or nations as we shall see hereunder.

The conception of individual subordination to society, to the extent of annihilating individuality, and not merely individual liberty, has not been approved by political thought in England and America, and the present day tendency for public opinion in these states is crystallising towards defining individual rights on a mathematical formula of minimum rights and maximum rights either in Industry, Finance, Commerce or Agriculture. ('Province and Function of Law' by Stone, page 774.) The ideal of welfare state is making rapid extension in all these states and has also permeated the Indian Constitution. Great spiritual energy and social amelioration was released to the masses in India by the historic temple entry proclamation in Travancore initiated by the Maha Rajah of Travancore on the advice of Sir C. P. Ramaswami Ayyar, the then Diwan of Travancore, and which was followed by other states and provinces. The Labour and Trade Union movements were recognised and strengthened by the Indian National Congress. Prohibition was introduced in Madras on the initiative of Sri C. Rajagopalachari, Premier of Madras and his example was followed by other provinces and states, thus securing decency of living to the poor man, besides setting up a proper moral code to both the rich and the poor. The last war has demonstrated, that unless economic democracy is established in some form of social adjustment or compromise, though not based essentially on rights, the never ending class struggle will perpetuate international conflicts of the worst type, thereby increasing postwar problems of unemployment, inflation, poverty, sickness, etc.

Paul M. Sweezy writing on (Socialism) says, that socialism is any devise or doctrine whose aim is to save individuals from any of the difficulties or hardship of the struggle for existence and the competition of life by the intervention of the state. In England, the principle of socialist democracy, or democratic socialism which will be the apter word, is coming to be recognised, and the Fabian Society has contributed much towards the growth of socialistic ideas consistent with demo-

cracy. The Encyclopædia of Brittanica, 13th Edition, defines socialism as follows:—
"According to James Borar, socialism is that theory which aims at securing by the action of central democratic authority, a better distribution, and in due subordination thereto, a better production of wealth than now prevails. State socialism in England is opposed to the theory of regimentation of the individual. Only selected industries are nationalised for appropriate reasons, *e.g.*, the Railways, Coal, Iron, Electricity, Iron ore, etc. There are different types of social insurance and poor laws" (*vide* Conflicting Factors of Economic Development by Harol G. Moulton 1947).

Devy Thompson writing on this subject in his book 'On the Democratic Ideal' says, that the precise meaning of economic democracy is still a matter of profound dispute among democrats. A few laws stand out, but as yet they form no pattern. It involves permanently such distribution of wealth as will prevent the present extremes of poverty and wealth, the prevention of large scale unemployment, and provide security of work without exploitation of workers for the private fortunes of a few, but he says its observance in agriculture is still a matter of controversy in England and France, that is, whether the states should own land and control it. Leaders of political thought in England like G. K. Chesterton and Bertrand Russel advocate 'Distribution' of private property as a preserver of liberty and social justice and social security and personal dignity, which arises whenever a man owns a little bit of property and is himself an owner producer (*see* 'Principles of Reconstruction' by Bertrand Russel, page 137). Small capitalism, according to him, must exist and emulate by the side of socialism in order to preserve democracy.

The labour party in England in their manifesto declare that they are committed to a policy of liberalising the administration in order to have a socialised and economically just Government and they contemplated in the last resort expropriation of property for compensation. Sir Stafford Cripps in his book on 'Democracy up-to-date', page 108, says that "civilization is placed to-day with the necessity of devising forms of Government which will weld into one composite whole, the efficiency of totalitarian control and planning in the economic field with the cultural and political freedom that democracy alone can provide. To stress the unessential liberties, or to demand the continuance of privilege and the licence for a limited class in society in the circumstances of to-day, is to invite the rapid destruction of democracy". Mr. Cripps suggests that the House of Lords should be retained only for revisional legislation, and not as a check on the power of the commons in initiating social legislation. Essential liberties must be guaranteed, and unessentials should be curtailed in public interest. Liberty to hold opinions, liberty to influence opinions, liberty to register opinions and economic liberty are important. Unemployment must be made a state responsibility, and employment insurance and poor law must be strengthened. Unemployment benefits, national health insurance, compulsory education, etc., are to be provided by the State. Workmen's combines should be organised and regulated by proper safeguards. The significance of these statements are of absorbing interest, and of real practical value to conditions prevailing in India, and the proposals of the Planning Commission may as well adopt the suggestions mentioned by Cripps. The observations of Sir Alexander Macven in his book on 'Towards Freedom' are worth noting on the aspects of distribution of wealth, and the need to preserve spiritual and religious liberty.

The American Constitution, has by judicial interpretation by the Supreme Court, extended the sphere of individual rights especially of workmen and labourers so as to be adjusted to the social and economic environments of the people. (See the Constitution and social economic changes by Rottschafer.) An enumeration under Article 10, that enumeration in the Constitution of certain fundamental rights shall not be construed to deny or disparage others retained by the people, is wide enough to embrace various rights to work, to proper wages, to be protected from disease, etc., which workmen can always agitate for (*see* 'Regulation of Public Utilities' by M. Clay). America, particularly United States, has raised the standard of living of its people by its high level of industrialisation and it may take centuries

for other countries with depleted financial resources like India to achieve in the course of 25 or 50 years what America has achieved after 150 years of strenuous planning and execution. But even America to-day stands in danger of losing its hold on its people if it does not provide for adequate translation of the people's wishes into Governmental policies (see Browder 'Communism in the United States'). Besides, in the interests of international peace and security, American standard of judging individual liberty must have a slight shift towards the recognition of the needs of an international society suffering from economic want and poverty. "In fact it would be necessary to raise the standard of living of countries like India and China if the surplus productive capacity of the United States is to be absorbed. With a higher standard of living and an increased purchasing power, the vast millions of India and China would be the potential customers of the surplus production of American factories. It is in the collective security of all nations of the world that we must seek the economic security of highly industrialised countries like the United States. It is to be expected that in the post-war reconstruction of the world there would be a rational system of distribution and consumption, so that the world will not again see the distressing phenomenon of poverty in the midst of plenty". (Sir R. K. Shanmugham Chetty's speeches on India and America, page 49). There must be a compromise between pure individualism and rank communism, the two conflicting idealogies of to-day represented by America and Russia respectively. A compromise based on social justice which the Hon'ble Pandit Jawaharlal Nehru himself visualises in his autobiography (at page 594) is what is now called as democratic socialism or a just balance between capital and labour, between wealth and poverty, a balance which the early constitutions of the 20th century really aspired for, but which in the result was upset by the development of dictatorship based on one party rule. Thomas Wilson in "Modern Capitalism and Economic Progress" (pages 123-132) says "Democratic socialism does not demand expropriation but promises fair compensation. The private ownership and control of capital is one of the foundations of democracy. If the ownership is found to be too much concentrated, steps should be taken to mitigate the evil and encourage the growth of smaller properties. This may be done by taxation like death duties. Levelling down will help but there must be a building up from below and the latter is more important of the two methods".

Now it has been given to India to give the lead to the rest of the world by enacting the constitution of the sovereign Republican Democracy of India in 1947, based on justice, economic and social, wherein there shall be equality before the law for all its citizens, and equality of status and equality of opportunity for all to earn their livelihood. The Indian democracy is a synthesis of principles drawn from both political democracies like America, England, France, Australia, Canada, etc., as well as economic or social democracies like the early 20th century Germany and Poland and the latter Russian and Irish constitutions. The constitution of 1935 itself provided for certain fundamental rights under sections 298 and 299. It was Pandit Jawaharlal Nehru that took up the question of fundamental rights and safeguards on the lines of postwar Poland, Esthonia, Zeckoslovakia, Latvia and other states of Europe. The Simon Commission rejected that idea. The first Round Table Conference took up the question of minorities. The Viceroy's consultative committee in 1932 considered a long list of fundamental rights. The whole matter was taken up in the 3rd Round Table Conference. Mahatma Gandhi declared in one of his speeches in the Round Table Conference in London in 1931 that the interest of the dumb millions alone was the supreme motive power of the Congress, and that the Congress will sacrifice every interest for the sake of the interest of these dumb millions. The Joint Select Committee on the Indian Constitution discarded the idea of implementing 'Fundamental Rights'. They agreed with Sir John Simon in discarding it that the most effective method of ensuring the destruction of fundamental rights was, according to them, to include a declaration of its existence in a constitutional document. They were not ready either to amend the preamble to the constitution of 1919 wherein responsible government is to be achieved only by stages. The 3rd Round Table Conference went into the question

and finally only a few rights were incorporated into the scheme of the Act. The English Magna Carta, the Petition of Right, the American Bill of Rights, etc., influenced the growth of fundamental rights in England and India (Refer International Law and Human Rights, page 127, by Laoderpatch). The problem of economic democracy was recognised in India by the Karachi Congress as a supreme necessity, and as a measure of social advance.

Now it was at the same time that the United Nations Organisation in 1947 constituted the Human Rights Commission for preparing a universal declaration of human rights, and these rights were passed unanimously by the General Assembly of the United Nations in December 1948 in Paris. The Charter of the United Nations and the articles of the International Labour Organisation, Philadelphia, reassured social rights and socialism of material resources to all nations.

The Indian Constitution has recognised the sanctity and validity of these recommendations and in Chapter IV of the Constitution styled as 'Directive Principles of State Policy' has enumerated several principles with a view to effect democratic socialism in the Indian Constitution, by virtue of social and economic advancement of the masses and particularly in Article 51, the Constitution empowers State Legislatures to pass laws for the promotion of international peace and security.

Part III defines and guarantees protection of individual liberty restricted in its operation by public interest. Part IV defines and guarantees in an indirect way the same liberties to the individual considered as a part of the society or the community, and by implication enables State Legislatures to pass measures of social and economic reform without prejudice to the rights mentioned in Part III. Part IV is really the impact of socialistic forces on Part III which is political democracy. The result of their conjoint constitutional effect as a result of progressive interpretation by the judiciary will in due course establish democratic socialism in India. That Part IV is subservient to Part III is laid down by the Supreme Court Judgment in *State of Madras* v. *Champakam Durairajan*, (1951) 1 M.L.J. 621, but at the same time it is a matter of profound satisfaction that the judgment of the Supreme Court in 1952 S.C.R. 889, *Behar Zamindari Case* contains observations that goes to show that law after all is an instrument of social progress. *Vide* (Sir Alladi Krishnaswami Aiyar's speech in the Andhra University): "The flexibility and capacity for growth and adaptation is the peculiar boast and excellence of the common law". *Vide* observations of Justice Mathews of American Supreme Court in *Huntado* v. *California*, (1884) 110 U.S. 576, Re, Due Process Clause, of the Fourteenth Amendment. The recent judgment in the Supreme Court, Delhi, reported in *The Hindu*, on 22nd February, called the 'Bihar Sathi Lands Restoration Act Appeal' lays down the fundamental right of the citizen to have equality before the law, a principle well recognised in all progressive forms of government. Following upon the abolition of feudal systems of land revenue like zamindari and jagirdari, what is to be the next step in Indian land policy?

Besides the observations made by me in regard to the applicability of principles of continental constitutions to the Indian problem, I might also suggest that an Economic Development Council financed by an Agricultural Finance Corporation in India is really necessary as a further step in the direction of solving social and economic reform schemes. The Council may be a Parliamentary Committee composed of all the members of the parties who might initiate legislations if their scheme is finally approved by the Supreme Court, on a reference for opinion by the President under Art. 143 of the Constitution as being consistent with fundamental rights of the citizen in a progressive society, and such legislation may be passed in Parliament as a reasonable restriction of fundamental rights. Refer Sir M. Visveswarayya's work on 'Planned Economy of India'.

There is large scope for development and practice of social and economic development in India under the leadership of eminent statesmen like the Hon'ble Pandit Jawaharlal Nehru, Prime Minister of India, and the recent report of the Planning Commission has made a sincere attempt to solve the economic problems

of the country under the Five-Year Plan. It is also gratifying to note that the plan is capable of modifications to suit growing needs, and suitable amendments may be made for the purpose of doing economic justice. The caution given by Mr. Attlee, Prime Minister of the former Labour Ministry in England, that in India with a majority of poverty-stricken people, democratic socialism may fall, and end in communism, should be remembered and sufficient safeguards should be imposed in introducing economic reforms in order to prevent this fall. A few details of the plan in my opinion as already expressed, may be modified to suit, the personal and property law of the Hindu community, and certain suggestions which advise caution in immediate implementation of them, have alone to be considered, but what strikes me most, and to which frank expression must be given, is the magnitude of the great step towards social and economic progress in India on the goal towards the realisation of democratic socialism which has been made by the strenuous work in drawing up the five-year plan, which promises to increase national income and per capita income in India doublefold, in the course of 25 years. Two things stand out for special mention, in the interests of the stability, through rigidity of the constitution, one is, the recognition of middle class standard of living as one to be guaranteed by the constitution as in the continental constitutions, and secondly, the need to stress on adequate rents and adequate compensation for expropriation of property, whether purchased by Government directly or by the tenant by legal provision. "Basis of valuation must be fair valuation of property used for convenience of public, and there must be establishment of an irreducible minimum beyond which legislators and committees must not go in the exercise of their descretion to fix fair and reasonable rates", vide *Smyth* v. *Ames*[1]. The process of industrialisation of the country will naturally raise the level of the lower classes to the middle class. An equal distribution of land may not be possible either considering shortage of landed wealth in proportion to population or efficiency of an economic holding of all absorbing interest, a fact which has been well recognised by the Planning Commission in its recent report. But lands of the upper denomination may be acquired on compensation in order to distribute them to really needy poor and unemployed landless people. Radhakamal Mukerjee in his work on 'Economic Problem of Modern India', page 240, suggests example of Denmark for copying the principle of land purchase by tenants. See also 'The Northern Countries in the World Economy' published by the Delegates in 1933.

Millions of acres of virgin land have already yielded to the plough, bringing large produce, on being supplied with water from the newly constructed irrigation schemes and the schemes now proposed to be financed under the Five-year plan, will open out further possibilities of fresh lands being brought under cultivation thus solving the acute food problem in the country permanently.

The world socialist Conference has been organised as an effective weapon for combating communism, and surely India will give the lead to the rest of the world in proclaiming its gospels of non-violence and by implementing its constitutional provisions in a progressive way, in order to take in judicial precedents, customs, conventions, etc., which will conduce to social progress in the Indian Society. Well may we hope that India will declare by the consitutional guarantees to the Indian Society and to the world, that its constitution has been adopted to suit progressive ideas whereby every individual, whether rich or poor, master or servant, capitalist or labourer, will be treated as a 'Partner in a joint enterprise', where society will not treat him as a mere instrument to its ends, but as a living organism shaping and co-operating in the working of the machinery of Government. This is the key note of the preamble 'Fraternity assuring the dignity of the individual and the unity of the nation' and may we add, the unity of the nations too.

The Hindu Ideal of Dharma is comprised in the following words :

" मातृवत् परदारेषु परद्रव्येषु लोष्ठवत् ।
आत्मवत्सर्वभूतेषु यःपश्यति स पण्डितः ॥

1. (1898) 169 U.S. 469.

i.e., Look upon other's wife as your mother,

Look upon other's property as a piece of stone (*i.e.*, don't claim it as of right),

Look upon others (all the rest of the world), their interests as your own (*i.e.*, duty to render help to others in suffering).

He who follows this precept, is the really learned man! In other words, it is the Hindu fundamental obligation to relieve the poor, and make necessary sacrifies for the same. May we hope that the great saint like Acharya Vinova Bhave, in canvassing for gifts of land, to be in turn gifted to landless unemployed labourers, be not only successful by getting proper response from rich landlords, but that many other charitable institutions may be built for the purpose of succouring the helpless, and hunger-stricken peasants, workers, and labourers in India!

"HIGH COURT FOR THE ANDHRA STATE."

By

S. VAIDYANATHAN, B.A., B.L., *Advocate, Supreme Court of India and High Court, Madras.*

On the establishment of the Andhra State by Act of Parliament under Article 3, Schedule I of the Constitution will be amended by adding 'Andhra' to Part A of the said Schedule. The question arises, what is the position of the Madras High Court, *vis a vis*, the newly established Andhra State? Under Article 214, which lays down that there shall be a High Court for each State ('State' here means a Part A State — *vide* Article 152), the Madras High Court will continue to be the High Court for the residuary State of Madras. As regards Andhra, two views are possible. One view is that immediately on the establishment of the Andhra State as a Part A State the jurisdiction of the Madras High Court is automatically excluded over the territory of the new State, and a separate High Court for the Andhra State will have to be established by supplemental and consequential Parliamentary legislation as provided by Article 4 and such legislation should be brought into operation simultaneously with the Act creating the new State under Article 3. If for some reason it is found neither feasible nor expedient to adopt this course, the alternative is for Parliament to make a law under clause (*a*) of Article 230 read with item No. 79 of List I of Schedule VII extending the jurisdiction of the High Court of Madras to the Andhra State. If neither of these courses is adopted, there will be violation of the mandatory provisions of Article 214.

According to the other view, the existing Madras High Court will be the High Court for the Andhra State also right from its birth as a Part A State, as the mere creation of the new State does not by itself without express Parliamentary legislation in that behalf, operate to exclude the jurisdiction of the High Court of Madras over the Andhra State (*see also* Article 225). In this view no legislation under clause (*a*) of Article 230 is required to confer on the Madras High Court "an extended jurisdiction" over the Andhra State. If, however, it is intended to have a separate High Court for Andhra with its principal seat in the new State itself, it is not only necessary according to this view to establish by legislation a High Court for Andhra within that State, but it is also necessary for Parliament to make a law under clause (*b*) of Article 230 read with item 79 of List I of Schedule VII, excluding the jurisdiction of the Madras High Court over the Andhra State.

It is submitted that having regard to the spirit and scheme of the Constitution, the first of the two views discussed above appears to be the sounder one.

SUMMARY OF ENGLISH CASES.

MANWARING *v.* BILLINGTON, (1952) 2 All E.R. 747 (C.A.).

Factories Act—Statutory duty of employer—If could be delegated—Delegation—What amounts to—Disobedience of express instructions of employer—Injury to workman—Liability of employer.

There is a very great distinction between the instructions by an employer to a workman as to how a particular task is to be performed and the delegation of a statutory duty imposed on the employer. To be a delegation of a statutory duty it must be made clear that it is a statutory duty that is being delegated and that what is being said is not mere instruction common to all workmen as to how the workmen should carry out the work.

An employer could not be expected personally to fix every ladder used by his men during painting operations, nor personally to supervise every operation, in the course of which the use of ladders was necessary. If he gave clear and adequate directions as to lashing and securing the ladders, he was doing what a reasonable employer was entitled to do.

WHITELEY *v.* WILSON, (1952) 2 All E.R. 940 (C.A.).

Rent Restriction Act, 1939—*Premises—Dwelling house or shop—How determined.*

Whether a structure is a dwelling house, or is an office, or constitutes other business premises, is a question of fact in the particular case to be determined on the evidence and that in marginal cases the Court may properly consider whether the business use or the business occupation does not so far predominate as to exclude from material significance the fact that there may be some part of the premises which can be said to be used for residential purposes.

The question in cases where the subject-matter of the tenancy is one building used partly as a dwelling house and partly as a shop, and no purpose is specified in the tenancy agreement, is whether the building should in a broad sense be regarded on the one hand, as a dwelling house which is partly or even substantially used as a shop, or, on the other hand, as a shop which is used in part for residential purposes.

BARTHOLOMEW *v.* BARTHOLOMEW, (1952) 2 All E.R. 1035 (C.A.).

Divorce—Husband and wife—Desertion—Constructive desertion—What is—When a ground of divorce.

To establish a right to a decree for divorce on the ground of constructive desertion it is necessary, it has been said time and again, to prove an actual intention to bring the matrimonial consortium to an end. Although the intention can be inferred from the circumstances, no such inference can be drawn unless the conduct relied on is of a grave and convincing character, equivalent to driving the other spouse away.

The fact that a wife is lazy and is dirty is not of necessity something which shows she is determined to get rid of her husband. She may be dirty because she is lazy or lacks energy.

BOOK REVIEWS.

INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST, published by Sanyal & Company, 1-1A, College Square (East), Calcutta 12. Price Rs. 40.

This book is a verbatim reprint of the dissenting opinion of Justice R. B. Pal of India who was one of the Members of the Bench that was constituted to try the Japanese War Crimes after the World War II. It is not the province of a reviewer to go into the merits of the opinions expressed by the learned Judge or the Majority of the Board. Suffice to say the judgment now placed before the public in book form is a masterpiece of logic and constitutes an interesting and useful reading.

After the end of the World War II the victorious Allied Powers constituted a International Military Tribunal for the Far East for the trial of Japanese leaders who were charged with crimes against peace and humanity. The entire set-up, procedure, evidence, etc., during the trial appears to have gone very much against the trained judicial mind of the learned Judge. The learned Judge in his dissenting judgment in the *United States of America and other Allied Powers v. Arakisadao and others*, has held that every one of the accused must be found *not* guilty of the charges and should be acquitted. According to the learned Judge the entire trial was gone through by the victorious Nations to attain a political end under cover of judicial appearance.

The book makes an excellent reading and for its exposition of the first principles of law and procedure in a new field, it stands unequalled. Students of International Law of War and Peace will find the book very useful.

The book is well got up and the printing and binding and the quality of paper is excellent, quite in keeping with the subject it deals with, which is of lasting interest. A number of interesting photographic Art plates adds to the reading value of the book.

OUTLINES OF INDIAN LEGAL HISTORY by M. P. Jain, LL.M., Lecturer, Faculty of Law, University of Delhi. Price Rs. 12. Dhanwantri Medical and Law Book House, 152, Elgin Road, Delhi, 6.

Ths history of any system of Jurisprudence is not without its attraction to the practising lawyer. However, its real utilitarian importance is only for the students. This book is obviously intended to meet the requirements of the students of the LL.B. and LL.M. classes of the Delhi University. Barring Cowell's 'History of Courts and Legislative Authorities in India' there is no book on the subject which the students could use. The author of this book is well equipped for the task he has achieved as he has been closely associated with the teaching of the subject in the University. The book will be found useful by students in other Universities too where the course of study comprises the subject of "Legal History."

The author has taken considerable pains in collecting a great volume of matter covering a large period and presenting it in a short compass with a precision and analysis that makes the book readable and useful. The later chapters relating to recent developments in the administration of justice are very instructive.

Digest of Decisions of the Labour Appellate Tribunal of India compiled by N. K. Khare and N. N. Akruwala with a Foreword by Sri K. P. Lakshmana Rao, President, Bombay Bench, Labour Appellate Tribunal. Price Rs. 10, Published by Indian Legal Publications, Ahmedabad.

A book of 115 pages has over 30 pages allotted for its Index and Table of Cases. The digesting of cases could have been more analytical and exhaustive. As it is, the reader is likely to get mixed in the Statute-heading and subject-heading. The subject-heading should be in bold types and the catchwords in italics to facilitate easy reference. Being first of its attempt in a new sphere of case digesting there is considerable scope for improvement. As a book of reference to those interested in labour problems the digest will be of great help. Though the decisions of these Tribunals are not precedents in the strict sense known to lawyers and jurists, still much of the law gets clarified in these decisions and their growing importance cannot be overlooked. A Digest of these decisions is a welcome effort and will receive much support from the public for whom they are intended.

The Employees' State Insurance Act (XXXIV of 1948) (Labour Code, Vol. IV) Edited by N. M. Shah, LL.B., Pleader, 1953. Price Rs. 7-8-0. Published by Chandrakant Chimanlal Vora, Law Publishers, Ahmedabad.

This small book with its bold printing, heavy binding and gold letters has unnecessarily increased its price. It reproduces the text of the Employees' State Insurance Act with the Central Rules and Regulations including the recent Provident Fund Regulations. Some State Rules of Bombay and Uttar Pradesh are also added. This little book purports to be the fourth volume of a Labour Code, three volumes of which have already been published and two more are in the press. More volumes are in the scheme of publication. Obviously, each Act relating to Labour Legislation is sought to be published as one volume. If that is so the need is all the greater to bring out the volumes at a lower price so that the entire Code will be within the reach of all. At the rates till now announced, the cost of the whole code when complete will be prohibitive.

End of Volume (1953) 1 M.L.J. (Reports).